

1-10.000

LITIGATION AGAINST STATE GOVERNMENTS AND RELATIONSHIPS WITH CLIENT AGENCIES

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1-10.100 Litigation Against State Governments, Agencies or Entities

In order to enhance productive communications with state governments and to avoid inter-governmental litigation whenever possible, the Attorney General has advised the Assistant Attorneys General for the Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax Divisions that it shall be Department of Justice policy to give timely notifications to the Governor and Attorney General of a state prior to the filing of a suit or claim against a state government, agency or entity. United States Attorneys should observe the same policy for cases delegated to them by those divisions.

The foremost goal in applying this policy to individual cases shall be to provide fair warning to state Governors and Attorneys General and thus to afford these leaders the opportunity both to resolve matters prior to litigation and to prepare for inquiries from local officials and the news media if an action is commenced.

Specifically, each United States Attorney or the Assistant Attorney General in charge of such litigation shall:

- A. Prior to the filing of each action or claim against a state government, agency or entity;
 - Advise the Governor and the Attorney General of the affected state of the nature of the contemplated action or claim and terms of the remedy sought; and
 - Notify the Deputy Attorney General and, if appropriate, the Associate Attorney General of compliance with subsection (a).
- B. Ensure that such prior notice is given sufficiently in advance of the filing of the suit or claim to:
 - Permit the state government, agency or entity to bring to the Department's attention facts or issues relevant to whether the action or claim should be filed; or
 - Result in settlement of the action or claim in advance of its filing on terms acceptable to the United States.
- C. Ensure that each attorney in his/her respective office or division reads, becomes familiar with, and complies with, this directive.

Exceptions to the notice requirements of this section are appropriate only when the United States Attorney or Assistant Attorney General determines that good cause for such an exception exists and notifies the Deputy Attorney General and, if appropriate, the Associate Attorney General of that determination.

1-10.200 Relationships With Client Agencies

Sections 1-10.210 through 1-10.230 discuss relationships with client agencies.

1-10.210 Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents

The Department of the Treasury and the Drug Enforcement Administration have requested that their appropriate Special Agent in Charge (or the equivalent) be notified by the United States Attorney's Office whenever the actions of one of their agents result in the granting of a motion for suppression of evidence, or are otherwise deemed illegal or improper in a judicial opinion. You should feel free to similarly notify Special Agents in Charge of other investigative agencies and/or the Criminal Division in appropriate situations.

Of course, all allegations of misconduct by Department employees should be brought to the attention of the Office of Professional Responsibility following the guidance set forth in 28 C.F.R. Sec. 0.39 et seq.

1-10.220 Case Processing by Teletype with Social Security Administration

There is a teletype receiver at the Social Security Administration's Office of Hearings and Appeals in Arlington, Virginia, which facilitates the processing of Social Security cases. Please include the routing signal address for the Office of Hearings and Appeals and the Office of General Counsel in Baltimore. The routing signal for both addresses is SSAGC. Each teletype on Social Security litigation (Social Security retirement, survivors and disability benefits; supplemental security income and medicare benefits, will include:

- A. Case name;
- B. Plaintiff's Social Security number;
- C. District court where case was filed;
- D. Date the complaint was filed;
- E. Date the United States Attorney was served;
- F. Name and FTS telephone number of the AUSA handling the case;
- G. Date petition in forma pauperis was filed if applicable; if not applicable, N/A.

The essential transmittal must be sent within 3 days upon receipt of notification of suit to insure a timely answer.

The teletype receives only. It cannot transmit messages. The proper routing signal will be "RR AA SSAGC."

Any questions may be directed to the Office of General Counsel in Baltimore, FTS 934-7543.

1-10.230 Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

On February 12, 1975, an understanding was reached between the Department of Justice and the Social Security Administration (SSA) regarding the release of information from records of the SSA where such information is required to afford a defendant a fair trial in a criminal case pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

A. Whenever the defendant in a criminal proceeding moves on trial for disclosure of information from social security records about someone else, the Department of Justice will attempt to resist such disclosure arguing that such personal information in social security records is confidential by law. In no event will the Department of Justice request such personal information for prosecutive purposes.

B. Where the defendant in a criminal case moves in court that information about, or the appearance of, the holder of a given social security number is necessary to his/her defense, and the court seems inclined to grant the motion, the Department of Justice will attempt to satisfy the court by offering to provide identifying data about the social security number holder such as sex, date of birth and race, without divulging his/her name or whereabouts. In such a case a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, Health and Human Services (HHS) to arrange for the disclosure of such information. The information will be furnished by SSA as expeditiously as possible.

C. If the court considers such information insufficient and orders the appearance of the social security number holder on grounds of due process, a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, HHS. If the Department of Justice assures SSA that it will not use the appearance of the number holder or any information derived from his/her appearance, or any information otherwise received from the Social Security Administration, directly or as a lead in any prosecution of the number holder, the Commissioner of Social Security will, under his "ad hoc" authority in Section 401.1 of Regulation 1 (20 C.F.R. Sec. 401.1) provide the Department of Justice expeditiously with the information.

D. If in a specific case the Department of Justice is unable to provide assurance that it will not use the information or appearance of the social security number holder for prosecution purposes, the Commissioner will nevertheless review the specific order under his/her "ad hoc" authority, considering all circumstances in that case, provide an expeditious reply -pro or con- to the Department of Justice, and if necessary, discuss the matter further with the Department of Justice.

E. The proscription against the Department of Justice requests for such information for purposes of prosecution does not apply in the case of violations of the Social Security Act or fraud against the Social Security Administration, as disclosure in these cases is provided for in 42 U.S.C. Sec. 1306, 20 C.F.R. Sec. 401 et seq.